

November 28, 2017

Thomas Bonetati
Director, University Bookstore
Mail Code 0008

Re: Investigation Report, Case number: OPHD [REDACTED]

Dear Director Bonetati:

The Office for the Prevention of Harassment & Discrimination (OPHD) initially received a report from Complainant on May 27, 2017, alleging that she had been subjected to sexual harassment at her on-campus employment. Complainant did not want to pursue the matter at that time and did not provide sufficient information for OPHD to investigate. On June 8, 2017, OPHD received a report from a third party that provided additional details about the University department where the harassment was allegedly taking place and the identity of Respondent.

I spoke with several student employees as part of an initial inquiry, and OPHD determined that a formal investigation of sexual harassment within the loss prevention department of the University Bookstore was warranted. On August 2, 2017, Complainant indicated that she wished to participate in the investigation as the complainant (as opposed to simply a witness).

On August 3, 2017, a Notice of Investigation was provided via e-mail to Respondent and Complainant with a notice of rights, options, and resources. The Notice specified that Respondent was alleged to have violated University of California Sexual Violence and Sexual Harassment Policy (SVSH Policy) Section II(B)(2), Sexual Harassment.

During the investigation, I interviewed Complainant, Respondent, and 11 additional witnesses. I also considered the documents submitted by Complainant. Respondent did not submit any documents for my review.

Based on my investigation, I find by the preponderance of evidence that Respondent violated the SVSH Policy against sexual harassment.

Summary of Allegations

Complainant alleges that during her employment at [REDACTED], Respondent made unwelcome personal comments and advances verbally and in electronic messages. Respondent also gave her a personal gift. Complainant indicated that Respondent's behavior

had sexual and/or romantic inclinations and interfered with her work at [REDACTED] to the point where she was forced to quit her job.

Investigation Methodology

My investigation included interviews of Complainant, Respondent, and 11 additional witnesses. I attempted to interview all witnesses offered by Complainant or Respondent. However, I was unable to connect with one witness suggested by Complainant. [REDACTED]

My investigation also included a review of the following documents:

Document	Provided by
56 pages of text messages	Complainant
Facebook screenshot	Complainant
Email exchange between Complainant and Respondent	Complainant
Text message	Complainant

The parties were given an opportunity to review the documents and information I collected, including all the witness names and statements. Complainant is [REDACTED], but she was able to conduct a remote evidence review on November 8, 2017. Respondent conducted an evidence review on November 1, 2017.

Investigation

1. Complainant's Statement

Complainant is an undergraduate student at UC San Diego who has worked at [REDACTED] from [REDACTED] until [REDACTED].

Complainant noted that the student employees in [REDACTED] are very social with one another. Complainant said that Respondent, who manages the loss prevention department, views himself as a "father figure" to the students who work there. Complainant said that Respondent seeks to build relationships with the students, but he sometimes takes it "too far."

Complainant noted that she and other student employees are part of a "leadership program" and had weekly one-on-one, closed-door meetings with Respondent. She said that Respondent

discussed his personal life with her and asked about her personal life. Complainant said that [REDACTED] told her on one occasion that the one-on-one meetings were inappropriate and a waste of [REDACTED] resources.

Complainant said that Respondent sometimes texted her late at night, and sometimes after he had been drinking. Complainant said that Respondent followed her on Facebook until she deleted him, and he became upset about the deletion. Complainant said that Respondent once invited her and Witness E to his house for "dinner and wine" when the two of them were underage, but she declined.

Complainant said that Respondent told her, "I love you," on multiple occasions verbally and in text messages. Complainant indicated that she initially thought these comments were okay, but they began to bother her over time. Complainant indicated that she felt that Respondent's use of "love" was in a "fatherly, not romantic, way."

Complainant indicated that she, and a couple other female student employees, received jewelry as Christmas gifts when other student employees just received gift cards. Complainant said she received a Kay Jewelry "open heart" necklace from Respondent in 2016.

Complainant also noted that Respondent became very upset in the beginning of 2017 when he learned that Complainant had begun dating another student who also worked in [REDACTED]. Complainant said Respondent was very upset and was crying. Complainant said Respondent had learned of the relationship by looking at the private communications on her Facebook page (which she accidentally left open on one occasion), but he pretended not to know for a couple of months.

Complainant said she told Respondent multiple times during the 2016-17 school year that she was uncomfortable with his texts and behavior. Complainant noted that when she began to push back more on his "intrusions" into her personal life in the spring of 2017, an "awkward dynamic" developed between the two. Complainant left her job at [REDACTED] in [REDACTED] 2017 because of the past interactions and the ongoing personal tension with Respondent.

Complainant provided documentation of communications between Respondent and her, including a large number of text messages, an email exchange between them, and a Facebook screenshot. Complainant received the following message from Respondent during the summer of 2016:¹

¹ Respondent's messages are in the lighter boxes on the left, and Complainant's messages are in the darker boxes on the right. [REDACTED]

< Messages

AI

Details

Good morning 😊 love you more
then asshole could ever. Just
saying.

Today 11:41 AM



Today 11:41 AM

You need to appreciate what
you have!

And let go of what you have
lost!

Ok so you need to tell asshole to
shove his swinging dick up his
ass before anyone shares your
bed with you.

Oh my god..... What????

Delivered

You have been abused and need
to liberate yourself.



Complainant also provided 56 pages of text messages between Respondent and her from December of 2016 to July of 2017. Many of the communications were focused on work or other "small talk." A sample of the communications relevant to this inquiry is included below²:

12/29/16, 11:12 AM

Humm missing you Littleone

² Respondent's messages are in the lighter boxes on the left, and Complainant's messages are in the darker boxes on the right.

1/9/17, 9:44 PM

Why is your soul so sad Littleone?

1/10/17, 11:04 PM

Wow - really. Fooled me, didn't you. Ok I'm out of your life per your request. You got what you wished for.

Have you been drinking tonight

1/11/17, 7:25 AM

Yep

Sorry

I've come to realize that we were meant to be together at this time to torment me. I am not saying this as a negative thing but a lot of time you cause me pain. But I believe that is your purpose in my life at the moment. I was not mad at yo I was really mad at myself. I'm my worst critic. I think the above image states what our currant condition actually is:

I will always care about you just because you breathe.

2/24/17, 8:33 PM

I am feeling that I hate you for putting me in this situation

What situation

The one that we are in currently. You getting involved with [REDACTED] that lead to the destruction of our relationship

I do not hold entire blame

Shutdown timer activated

I feel you are blaming me for a lot of things that you are deferring from your actions.

I can accept that burden but it was not of my doing. Whatever

There's no rule stating me and [REDACTED] can't date.

So all you care about is you and [REDACTED]?

I never said that. You created all this stress and drama for no reason.

You really have no understanding of who I am and apparently of what I value. You are killing me

I just realized that you don't care about me so I need to learn how not to care about you!

2/25/17, 11:09 AM

Sorry I'm having such a hard time with this. But I will come to terms with it soon. I need to tell you that from the business side I value and appreciate you very much as a member of our team. That will never change!

Ok in reality I'm operating under the premise that you don't want me in your life anymore. If this has changed it would ease my pain and help give me a sense of direction for our relationship. Consider everything and make a decision. I would appreciate it if you communicated your decision to me so I can accept the torment I live under or plan to proceed forward adding value to your life. Your decision, your life. Whatever you decide I will understand.

3/12/17, 8:53 PM

Thanks for your support. . .

3/13/17, 9:32 PM

Just because you breathe

3/16/17, 11:24 PM

For what it is worth to you. I'm missing you. Go figure

Feeling really confused and troubled

4/5/17, 10:12 PM

So based on our interactions of the last two weeks, I have accepted that our personal relationship has died. You win, I'm going to let it go and understand that we don't have the relationship I thought we had. Stupid me.

I can separate life and maintain a professional relationship with you. You are a valued member of my staff.

I'm finally ready to give you what you want and walk away. It is not easy but I feel since that is what you want. That is what I need to do.

Hard decision for me. Been thinking and observing

and analyzing your behavior to come to this conclusion.

Sorry for any discomfort I may have caused you.

Been thinking about this for a while now. Anyway, you win!!

Since my definition of what is appropriate and what is not has changed drastically. I used to think many things that happened were acceptable and normal that now I think are absolutely unacceptable and should not be happening. That's what happens when you take a step back and really think about what is going on. I hope you find your peace or whatever it is you're looking for on vacation.

4/30/17, 8:14 PM

Feeling the need to say that I'm sorry for any uncomfortable situations I may have caused you to feel. I intend to let you go and not infringe on your life going forward. I also want to thank you for everything you have done for me!!

5/10/17, 8:28 PM

I Miss You!

5/14/17, 8:37 PM

I'm here for you if you ever need me. . .

5/16/17, 8:49 PM

Please find / make time to talk to me tomorrow.
Thanks!

I need to know where you and I are at in our relationship or our non-relationship. We need to decide where we are going or not going. Thanks

For your consideration, I never stopped loving you!

We need to determine how to proceed

7/4/17, 8:23 PM

██████ I love you just because you breathe. I now need to find a way to let you go, so I don't anguish about not having you in my life anymore. You will always have a special place in my heart ♥ .

Wishing you the best in life. Good bye.

7/23/17, 7:19 PM

Thanks. You too

Delivered

I would like to get together for either breakfast , lunch, or dinner with you. Please let me know what works for you. I will make it work on my end.

Bottom line is that I love you and I have been missing you! Ok , so it's your call going forward. This will be a defining moment, which I will respect.

On April 25, 2017, in response to an email in which Respondent told Complainant that she was "going out of [her] way in an attempt to punish [him]," Complainant emailed Respondent:

I'm not sure why you think that I am trying to punish you. I do not appreciate any of the text messages or emails you have been continually sending, and I know that you know this because I told you before not to text me these things or when you have been drinking. I would appreciate if these would stop.³

2. Respondent's Statement

Respondent is the Operations Manager at the UC San Diego Bookstore. He stated that he instituted a leadership program in the loss prevention department to offer training and coaching to some of the student employees who showed initiative. Respondent said the one-on-one meetings with the students generally last an hour. Respondent said he had never heard criticism of the practice from his supervisors or HR.

Respondent said he communicates with his team through emails and texts on both work and social matters. He acknowledged that there had been times when he was drinking and texted his student employees.

Respondent said he typically gives the leadership team small gifts at birthdays and holidays such as a gift card to the Bookstore or Amazon. Respondent said he gave an "open heart" necklace to four female students he "had become close with," including Complainant. Respondent said he gave beer and beer glasses as gifts to male employees who had turned 21.

Respondent said there is no official policy in his department that prohibits dating, but he frowns on it because it adds stress to the department and makes it difficult to function efficiently. Respondent said it was "obvious" in the office that Witnesses E and F were dating. Respondent said he was upset at first, but they were honest with him so he accepted it. Respondent noted that their relationship did not interfere with work.

Respondent said he suspected that Complainant and another student employee were in a relationship based on their behavior. Respondent said that in December of 2016 he looked at the personal communications on Complainant's Facebook page between Complainant and the student that confirmed the relationship. Respondent said he did not discuss it with them until February of 2017. Respondent said he was "upset" and he "felt betrayed" because they were highly trusted employees. Respondent said he was concerned it would interfere with work, but it turned out that there were no problems.

Respondent acknowledged that he has repeatedly told students, "I love you." Respondent said these comments were not intended in a romantic manner. Respondent said he told it "to a lot of different people at a lot of different times." Respondent said he told them he loved them

"because of who they are; they are great people." Respondent indicated he had said "I love you" to at least nine students including Complainant and two witnesses in the investigation.

Respondent acknowledged inviting students over to his house to eat, but not for "dinner and wine," and none of the students were underage. Respondent denied that any students ever stayed at his house. Respondent denied making a comment encouraging two of the students to sleep together. Respondent said he does not remember giving shoulder rubs to students, but he said he has patted them on the shoulders. Respondent said he has hugged students (although does not normally do so), but he has never kissed any students.

Respondent said that he and Complainant were "very close at one point," but Complainant became angry at him for the Facebook incident. Respondent said that he felt Complainant was "trying to punish" him because he disapproved of her relationship.

Respondent reviewed the text and email messages with me and acknowledged that they were his communications with Complainant. Respondent indicated that the text messages [REDACTED] seemed to contain a selection of text communications, but not the complete set of communications. Respondent declined to provide text messages for the investigation although I invited him to do so.

Respondent said he was "not proud of" the messages [REDACTED]. Respondent indicated that Complainant had a relationship with a non-student who had cheated on her and broken up with her. Respondent said that Complainant called him on multiple occasions crying to discuss the breakup. Respondent said that he and Complainant did not have a follow up conversation after his text.

Respondent acknowledged that he had the pet name "Littleone" for Complainant, and that in addition to using the name in text messages, he likely also called her that at work. Respondent said he had nicknames for at least three other female student employees. Respondent said that he did text Complainant at night when he was drinking. Respondent indicated that when he referenced a "relationship" in the text messages with Complainant, he was not speaking in terms "of anything romantic" between Complainant and him. Respondent said that he and Complainant provided support to each other when they went through hard times in their lives, and that is reflected in the text messages.

In reference to the messages about "loving" Complainant, Respondent said that it was just friendship and there was never a romantic connection. Respondent said he kept contacting Complainant in an attempt to repair their relationship. Respondent said he was disappointed that they parted on bad terms.

3. Witness A

Witness A is a UC San Diego staff member who worked with Complainant [REDACTED]. Witness A had no first-hand knowledge of any conduct by Respondent. Witness A indicated that Complainant had told him of her uncomfortable interactions with Respondent

including the leadership development meetings, personal text messages, and gift giving. Witness A felt obligated to report the matter as a "responsible employee" at UC San Diego.

4. Witnesses B – F

Several student employees with whom I spoke were aware, to varying degrees, of behavior by Respondent that made them uncomfortable. Witness B said he felt Respondent liked to develop personal relationships with student employees that were sometimes "too personal." Witness B said Respondent spent more time with the women in the leadership program than the men. Witness B said he observed Respondent devote extra time and attention to several female employees: a student who had already graduated; Complainant; and Witness I. Witness B indicated that he was aware that Respondent gave gifts that were "romantic in nature" to some of the women. Witness B said he received late night group texts when he believed Respondent had been drinking (although he never received personal texts just to him). Witness B said he was aware that Respondent became angry when he learned that Complainant and another student employee were dating. Witness B said he felt Respondent "took it personally." Witness B thought that Respondent was often "subtle" and "manipulative" with his treatment of the student employees.

Witness C said she had "mixed emotions" about Respondent. She said Respondent's "intentions are good," but he does "weird, inappropriate, unprofessional stuff." Witness C said Respondent had long (one to two hour) closed door leadership sessions with the students. Witness C said they often discussed personal aspects of life in addition to leadership. Witness C said she received late night text messages from Respondent that he "loved her unconditionally." Witness C said Respondent referenced that she was "like a daughter" to him. Witness C noted that Respondent paid a lot of attention to Complainant. Witness C said Respondent gave her a bell charm for Christmas, and he gave Complainant a nice necklace.

Witness D said that the [REDACTED] had a "family atmosphere." She said that Respondent had made comments that made her "slightly unsure," but others told her that he did not mean anything by it. Witness D said that Respondent had posted a comment on her graduation picture that he was "attracted" to her.⁴ Witness D said she was aware of some "drunk texting," but she was not aware of any gifts.

Witness E said she left her job in [REDACTED] in [REDACTED] 2017 because she "was not comfortable working there" anymore. Witness E said she felt Respondent demonstrated a preference for the female employees, and had more personal discussions with the female students. Witness E said that Respondent invited Complainant and her over for "dinner and wine" when they were both still underage. Witness E indicated that, as compared to the other female student employees, Complainant was "on the receiving end the most" with respect to Respondent's inappropriate behavior. Witness E said Respondent texted the female employees

when he was drunk and told them that "he loved them." Witness E said she was aware that Respondent had told a male student that he loved him "like a son." Witness E said she knew that Respondent was upset that she and another student employee began dating. However, Witness E said Respondent was "way worse" when he learned that Complainant and another student were dating because he felt "betrayed." Witness E said she never got jewelry from Respondent, but she thought it was "weird" that Complainant and another female got necklaces from him for Christmas. Witness E said one of the most upsetting things Respondent did was to tell Complainant and another student employee that they "should sleep together" after each had recently broken up with a significant other.

Witness F noted that Respondent forms "overly emotional relationships" with some members of his staff. Witness F said he was uncomfortable when Respondent told him that he thought of him "as a son." Witness F noted that he was aware that Respondent would send drunk texts, but he did not receive any inappropriate messages himself. Witness F was aware that Respondent gave necklaces to some of the female students as gifts. Witness F said that Respondent was not happy when he learned that Witnesses F and E were dating, but it was "a whole different situation" when he learned about the dating relationship of Complainant and another student employee. Witness F described Respondent as "very upset" and "emotional." Witness F said he became aware that Respondent had looked at Complainant's Facebook page by checking Complainant's browsing history and seeing Respondent on the office security camera at the same time as reflected in the browsing history. Witness F recalled that Complainant was very upset that Respondent had invaded her privacy like that.

5. Witnesses G – J

Several student employees I spoke with were not aware of any behavior by Respondent that struck them as improper. Witness G was aware of "tension" between two female employees and Respondent, but she had not experienced any behavior by Respondent that made her uncomfortable. She was aware that the leadership development program involves one-on-one meetings behind closed doors.

Witness H said Respondent was "an awkward person," but she had not experienced or witnessed any inappropriate behavior based on sex. Witness H said Respondent "plays favorites" and "manipulates" the employees. Witness H was not aware of any personal texts or gifts.

Witness I said she is part of the leadership program but she is not aware of any harassment issues for herself or others. Witness I said she got a gift card for her birthday, but she believed others did too. Witness I said that she has not received any texts from Respondent that made her uncomfortable. Witness I said that Respondent talked about his personal life regularly, but it was "benign."

Witness J said she started working at [REDACTED] in [REDACTED] 2017, and she has not noticed any improper behavior. Witness J said the leadership program is evenly split between males

and females. Witness J noted that her experiences in the department have been “very positive.”

6. Witness K

Witness K is [REDACTED] at [REDACTED]. Witness K said she has not witnessed or heard from anyone about harassing behavior by Respondent. Witness K said Respondent is known to be a “personal” manager because he does a lot of team building and leadership training with his student employees. Witness K said she was not aware of any gifts or favoritism.

Policies, Factual Findings, and Analysis

1. University of California Policy on Sexual Harassment

The University of California Policy on Sexual Violence and Sexual Harassment defines prohibited conduct of sexual harassment. Specifically, Section (B)(2) of the SVSH Policy defines Sexual Harassment as:

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
 - i. Quid Pro Quo: a person’s submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program; or
 - ii. Hostile Environment: such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person’s participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.
- b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:
 - i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);
 - ii. in hierarchical relationships and between peers; and
 - iii. between individuals of any gender or gender identity.

In an investigation such as this, a fact-finder should give consideration to the totality of the circumstances in which the conduct occurred. When there are conflicting reports, it is important to weigh credibility. Factors such as the opportunity to observe, corroboration, consistency, inherent plausibility, bias, and demeanor may be taken into consideration when deciding the credibility of a witness. The standard of proof used in weighing evidence is the preponderance of evidence standard, or "more likely than not."

2. Analysis and Findings

The parties generally agree about the nature of many of Respondent's communications and actions towards Complainant. Respondent acknowledged that he regularly conducted one-on-one leadership meetings with student employees including Complainant. Respondent acknowledged telling Complainant and other student employees that he loved them. Respondent acknowledged giving jewelry to Complainant and other female student employees as Christmas gifts when other students received gift cards. Respondent acknowledged calling Complainant and other female student employees by pet names. Respondent acknowledged that he looked at Complainant's private Facebook messages to learn about her romantic relationships, and that he became upset when he confirmed Complainant was in a relationship with another student employee.

The text messages also provide a clear record of additional communications between Complainant and Respondent. A review of the messages demonstrates that during the winter and spring of 2017, Complainant expressed her desire to keep her relationship with Respondent professional, but Respondent continued pressing to be a part of her personal life (even after she had left her job at [REDACTED]). As evidenced by the testimony and the text messages, Respondent's conduct took place on a regular basis from at least the end of 2016 through the summer of 2017. This qualifies as "severe or pervasive" under the SVSH Policy.

Respondent denied that any of his comments were meant in a romantic or sexual manner. Complainant also indicated that she thought his comments were intended in a "fatherly" way. However, the fact remains that "I love you," "I never stopped loving you," and "I love you just because you breathe" are overtly romantic or sexual statements. The overall tone and frequency of Respondent's emails about their "relationship" in the winter and spring of 2017 indicates a higher perceived level of intimacy than work acquaintances or even friends.

In the text message from the summer of 2016, Respondent wrote to Complainant that he could "love you more than asshole ever could" and that "You need to appreciate what you have." Respondent's comparison of himself to Complainant's boyfriend in terms of who could "love [her] more" constitutes an overt romantic or sexual comparison. In that same set of messages, Respondent made a statement about Complainant "sharing her bed" that was clearly a sexual reference. Further, the gift of a necklace can reasonably be seen as a romantic gesture, particularly when certain female employees (including Complainant) were singled out for the

special gift while other employees receive gift cards. This conduct goes well beyond an appropriate professional work relationship.

Other student employees corroborated that Respondent's actions were "too personal," "weird [and] inappropriate," and made them feel "uncomfortable." Multiple witnesses confirmed that Respondent's attentions were more focused on the female student employees, and most particularly on Complainant. Respondent's act of surreptitiously looking on Complainant's Facebook messages to confirm a dating relationship that he suspected and then his overly-emotional response also supports the conclusion that his actions were "of a romantic or sexual nature."

Per the SVSH Policy, investigators should give consideration to the "totality of the circumstances" in sexual harassment investigations, including whether the parties are staff and student and whether there is a hierarchical relationship. The lengthy, closed-door, one-on-one meetings Respondent conducted with student employees raise a red flag about Respondent's judgment in dealing with his student employees. Additionally, Respondent's manager position in the department in which Complainant was a student employee and a subordinate provides context to the nature of their relationship and his behavior. Respondent was older and in a position of direct authority over Complainant. Taking all of the relevant communications, actions and circumstances into account, I conclude that Respondent's behavior qualifies as "verbal, nonverbal or physical conduct of a sexual nature" under the SVSH Policy.

Complainant said she became more uncomfortable with Respondent's attention and communications over time, and she told him so on multiple occasions. The text messages confirm that Complainant repeatedly attempted to separate work and personal lives with Respondent, and Respondent repeatedly pressed to be part of her personal life. Complainant specifically told Respondent that his behavior was "unacceptable" in a text message on April 5, 2017. She again told him in an email on April 25, 2017, that she did "not appreciate any of the text messages or emails [he had] been continually sending," and that she wanted it to "stop." Many of Respondent's text messages and emails were inappropriate before Complainant's admonitions, and they continued unabated afterwards. Respondent's conduct was "unwelcome" under the SVSH Policy.

Eventually, the situation became so unpleasant, that Complainant felt compelled to leave her job. At least one other student employee (Witness E) also left her employment at [REDACTED] because she was uncomfortable with Respondent's behavior. In addition to Complainant, five other witnesses expressed their discomfort with Respondent's behavior. Thus, considering all of the circumstances, I conclude that Respondent's actions unreasonably interfered with Complainant's employment, and "a reasonable person" would find the environment he created to be "intimidating or offensive" pursuant to the policy.

Recommended Findings

Based on the evidence and totality of the circumstances, I find it more likely than not that Respondent violated section (B)(2) of the SVSH Policy for Sexual Harassment.

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual harassment. Accordingly, this matter is referred to you for any disciplinary steps.

I will inform Complainant and Respondent that OPHD's investigation is complete. They may request a copy of this report, which will be redacted in accordance with University policies. Please let me know if I can provide additional information on this matter.

Respectfully submitted,



Michael Budelsky
Complaint Resolution Officer

cc: Jennifer Broomfield, OPHD Director

[Redacted]